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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

FEB 21 2003

In the Matter of

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Amendment of Section 73.202(b)

) MM Docket No. 01-143

Table of Allotments

) RM- 10153

FM Broadcast Stations

)

(Noblesville, Indianapolis
and Fishers, Indiana)

)
)

To: Assistant Chief, Audio Division
Media Bureau

SUPPLEMENT

INDY LICO, Inc. ("INDY"), licensee of Stations **WGRL(FM)**, Noblesville, Indiana and **WGLD(FM)**, Indianapolis, Indiana and S.C.I. Broadcasting, Inc. ("SCI"), licensee of Station **WQKC(FM)**, Seymour, Indiana ("Joint Parties"), by their counsel, hereby submit this Supplement to address one issue raised by the Commission staff.¹ The Commission staff has asked the Joint Parties to address the circumstances necessitating a change in the proposed reference site for Station WGRL at the comment stage.

I. By way of background, INDY filed the petition for rule making in this proceeding, proposing to change the community of license of WGRL from Noblesville to Fishers, Indiana at the station's current transmitter site. Subsequently, a change in ownership of WQKC made a further improvement in the coverage of WGRL possible.² Specifically, WQKC can relocate and provide Sellersburg, Indiana, with its first local service. This relocation makes possible a transmitter site change for WGRL that increases the population able to receive interference-free service from the station. Accordingly, INDY and SCI together filed an amended proposal in the

¹ This Supplement is filed without a Motion to Accept under Section 1.415(d) in response to a request by the Commission staff.

² See File No. BTCH-20010214ABC. SCI and INDY have the same parent company.

comment period in this proceeding, requesting the change in community of license for WQKC and the transmitter site change for WGRL.

2. The possibility of specifying a new transmitter site reference point for WGRL prior to the comment date was considered and analyzed by INDY. However, INDY was unable to change sites for several reasons. The most that WGRL could move in the direction of WQKC was only 4 km unless WQKC changed its transmitter site or downgraded its facility. On February 14, 2001, INDY's parent company filed an application for transfer of control of the WQKC licensee. But changing WQKC's facility was not possible prior to the closing date of May 25, 2001, because the Seller (Transferor) of WQKC would not agree to any change in its station's facility. The Buyer (Transferee) was told by the Seller that any change would cause disruption to its attempt to retain employees and advertisers who were already concerned about the future of the station. Thus, INDY abandoned its plan to change the WGRL site during the rule making proceeding. Instead, INDY planned to change WGRL's site at the implementation stage by filing a contingent application with WQKC whereby WQKC would reduce its Class B facility at its current site pursuant to Section 73.215 of the Commission's Rules or downgrade its class. This plan was in effect from the time the Petition was filed until May 25, 2001 when closing occurred.

3. It was not until after the Commission issued the NPRM on June 29, 2001, that INDY decided to revisit its options with its engineering and legal advisors. The decision to propose changing the WGRL site by reallocating WQKC to Sellersburg, Indiana was made just before the August 20, 2001 comment date. INDY does not have any records which indicate the exact date. However, the decision to make these changes was definitely made after the issuance of the NPRM. The decision was made in part due to the Commission policy then in effect that

permitted such changes at the comment stage. See e.g., Moberly, Missouri et al., 16 FCC Rcd 21182 (2001) (counterproposal advanced by initial petitioner and another party). It was not until November 30, 2001 that the Commission changed its policy in Taccoa, Lawrenceville and Sugar Hill, Georgia, 16 FCC Rcd 21191 (2001) and specifically stated that this policy change would not apply to pending cases.

4. The Joint Parties do not believe that the Commission should apply its new Taccoa, Georgia, policy to this proceeding, for a number of reasons. First, the Petition was filed by INDY only but the Amended Proposal was filed by the Joint Parties with SCI having changed ownership. Thus, this is not a case of one party counterproposing itself. See e.g., Moberly, Missouri, supra. Indeed, INDY could not have filed the amended proposal prior to May 25, 2001 because it did not have the cooperation of the Seller of WQKC. INDY did not formulate its modified plan until a short time prior to the **August 20, 2001**. Second, the public has not been deprived of the opportunity to comment on the Amended Proposal. On February 21, 2002, the Commission issued a Public Notice accepting the Amended Proposal with the new WGRL reference site and set a reply date. There were no reply comments filed. That reply period provided any party adversely affected by the Amended Proposal the opportunity to state its impact, with the new Taccoa policy having been announced several months earlier. Third, a change in transmitter location (such as the amended WGRL proposal here) meets the “logical outgrowth” test and need not be submitted to the public for additional comment. See e.g., Moncks Corner, Kiawah Island and Sampit, South Carolina, 15 FCC Rcd 8973 (2000) (proposal for a new transmitter site is not a “counterproposal”).³ Finally, Taccoa was announced after the

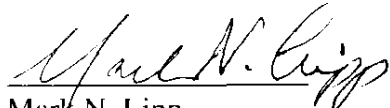
Indeed, the Commission routinely entertains a change in transmitter site filed on or after the counterproposal deadline in a proceeding. See, e.g., Oswego and Granby, New York 16 FCC Rcd 16927 (2001) (alternate transmitter site specified in reply comments); Panama City, Florida, 16 FCC Rcd 15169 (2001) (transmitter site modified in

filing of the Amended Proposal, with the specific language that it would be applied to "future counterproposals." **Thus**, its application would be retroactive in this case, and unfair to the Joint Parties who reasonably relied on existing policies.

5. Nevertheless, should the Commission decide to apply the Taccoa policy to this case, the Joint Parties **request** that they be **allowed** to withdraw their Amended Proposal insofar as it proposes a new **reference** site for WCRL, and return to **the** site specified in its Petition for the allotment of Channel 230A at Fishers and grant that proposal. The Commission could then treat the WQKC proposal for **Sellersburg, Indiana** as a new petition by issuing a separate NPRM in a new docket or a Further NPRM in this proceeding.

Respectfully submitted,

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February 21, 2003

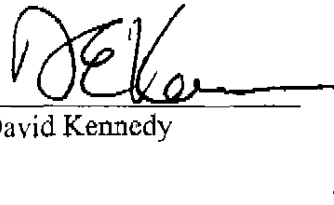
supplemental comments filed after counterproposal deadline); Bay Minette and Daphne, Alabama, 10 FCC Rcd 11527 (upgrade from C3 to C2 at a new site filed after counterproposal deadline).

DECLARATION OF DAVID KENNEDY

I, David Kennedy, hereby declare as follows:

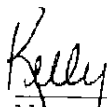
1. I am the President of Susquehanna Radio Corp. ("Susquehanna"), parent company of INDY LICO, Inc. ("INDY"). I was personally involved in the purchase of WQKC(FM), Seymour, Indiana, and in the filing of a petition for rule making involving WQKC and INDY's Station WGRL(FM), Noblesville, Indiana.
2. During the preparation of the petition for rule making, we were aware that an additional signal improvement could be made to WGRL if WQKC would change its transmitter facilities. However, the petition for rule making was filed without this additional improvement because we could not at that time secure the cooperation of S.C.I. Broadcasting, Inc. ("SCI"), the licensee of WQKC. SCI was concerned that any agreement to downgrade or relocate the station could interfere with its relationship with its advertisers, and could adversely affect employee relations. Instead, we planned to file contingent applications after the rule making was granted in order to gain the maximum signal improvement for WGRL.
3. On May 25, 2001, Susquehanna acquired SCI through a stock purchase transaction with the FCC's approval. However, even after this acquisition, we were not thinking in terms of amending the rule making proposal, because we had determined to proceed via contingent applications as described above.
4. When the notice of proposed rule making was issued on June 29, 2001, it set a deadline for comments on the petition of August 20, 2001. Working with our legal and engineering advisors, we determined we could amend our petition to include the WQKC relocation, which we were advised was consistent with FCC policies and procedures. Aware of the filing deadline, we made our decision a short time before August 20, 2001 with only sufficient time for our consultants to complete the necessary work and make the filing with the FCC.

I declare that the foregoing information is true and correct to the best of my knowledge, information, and belief.


David Kennedy

Subscribed and sworn to before me, a notary public for the State of Pennsylvania,

County of York, this 21 day of February, 2003.


Notary Public

Kell Quick, Notary Public
York, York County
My Commission Expires Mar. 5,
2006, and is a Notary Public